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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re ROMAN S., a Person Coming Under the
Juvenile Court Law.

ROBERT S.,

Plaintiff and Respondent,

v.

NORMA C.,

Objector and Appellant.

F072598

(Super. Ct. No. AT-3489)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. John L. Compton, Commissioner.

Liana Serobian, under appointment by the Court of Appeal, for Objector and Appellant.

Glenn R. Wilson for Plaintiff and Respondent.

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* Before Kane, Acting P.J., Poochigian, J. and Smith, J.

INTRODUCTION

Father Robert S. filed a petition pursuant to Family Code¹ section 7822, subdivision (a), to terminate the parental rights of mother Norma C. over their mutual child, Roman. Mother objected to the petition and after a contested hearing, the petition was granted. Mother appeals. We affirm.

FACTUAL AND PROCEDURAL SUMMARY

On July 3, 2014, father filed a petition to terminate mother's parental rights over Roman, who was nine years old at the time. Father stated in the petition that mother had not made contact with Roman since May 24, 2013, a period of over one year, with the intent to abandon the child.

Mother filed an objection to the petition for termination of parental rights on July 17, 2014. In her objection, mother stated she had made multiple attempts to locate father, to no avail. Mother alleged father had instructed Roman's school not to release the child to her and that father and his wife, Erica, hindered her visitation with Roman. Mother wanted the court to enforce visitation and inform her of Roman's whereabouts.

On April 18, 2014, a Family Court Services investigator's report was filed. Roman was interviewed alone for the report. Roman stated he did not think he had seen mother for over a year. He understood that his stepmother, Erica, wanted to adopt him and for that to happen Norma cannot be his mother any more. Roman stated he had "gotten used" to not seeing his mother and when he did see her, she and the other people in her home "were mean to him." Roman would often be confined to his room because "they" said he talked too much; other children in the home received presents at the holiday, but he did not. Roman stated he loved Erica and wanted her to be his mother.

¹ References to code sections are to the Family Code unless otherwise specified.

Father was employed; had no criminal history; and no contacts with Child Protective Services. Father was married to Erica and they had one child together.

Mother was not employed. She has one child older than Roman and four children younger than Roman; mother lived with her children and the father of her four younger children. Father was granted primary physical custody of Roman in February 2011 and mother had visitation; however, she stated she had difficulty with exercising visitation because she did not have a car or a driver's license. Mother also claimed she could not visit because father had moved and failed to give her his new address; however, the report noted that mother's visitation order specified she was to pick Roman up at school, not his father's home.

Father stated he sought custody in February 2011 because there were a large number of people living in mother's two-bedroom apartment and there were people sitting outside the apartment using drugs. After he was given custody, mother initially exercised visitation regularly. It became more sporadic and mother saw Roman only two times during the 2012-2013 school year. She last saw Roman in June 2013.

When mother contacted Roman's school in November 2013 to state she was picking him up, the school contacted father and father contacted mother. Father asked to meet with mother before she picked up Roman, since it had been about six months since her last contact with Roman. Father offered to bring Roman and to pick up mother and her children, and to pay for dinner at a pizza parlor, so mother, father, and Erica could talk while the children played and ate. Mother initially agreed, then reneged and had her son call father to state they would "see him in court."

A contested hearing on the petition commenced on November 14, 2014, and took place over several days and months. The investigator's report was admitted into evidence pursuant to section 7851. The custody and visitation order dated February 24, 2011; Roman's school records from August 2011 to February 2012; and a visitation calendar were also admitted into evidence.

Mother testified that in 2011, when father obtained custody of Roman, mother was living in a two-bedroom apartment with 12 other people. Mother had six children, including Roman. In February 2011, when father was granted custody of Roman, mother was given visits every other weekend and every Wednesday.

Mother, her four younger children, and their father were living with Roman's maternal grandmother and stepgrandfather. Her older son did not live with her, but visited every other weekend. Mother did not have a driver's license or a vehicle and relied on others to give her rides. She visited regularly while Roman was at a school near where she lived; when father moved and Roman transferred schools, mother needed transportation.

Mother and maternal grandmother had a falling out in June 2013 and mother moved out; they didn't speak to each other for eight or nine months.

In May 2012, mother began missing Wednesday visits due to not having a ride; during summer 2012, she visited Roman for one full week each month because of transportation issues; in fall of 2012, mother saw Roman one weekend a month, again because of transportation issues. Mother saw Roman in March, April, and May of 2013; May 2013 was her last visit with Roman.

Mother attempted to find father's new home, based on a note Roman gave her that appeared to be in father's handwriting. Mother claimed she could not locate the address. Mother called Roman's school in September 2013, stating she wanted to pick him up; the school staff told her they would need to check with father. A few weeks later, in November 2013, mother again notified the school she wanted to pick Roman up; mother stated father didn't permit the visit.

There were a total of about six conversations among mother, father, and Erica that day in November 2013. Father invited mother to dinner, but she didn't want to go because she didn't get along with Erica.

Mother claimed she was unable to keep to the visitation schedule because she had no independent transportation; the other adults in the house worked; and she had to watch her younger children. Mother acknowledged she never asked father to provide transportation for Roman for visits. Mother came to father's work place once to complain about Erica picking Roman up from school; father asked her not to come to his work again and mother did not attempt to contact father at work about visitation with Roman.

Mother currently was living in her sister-in-law's home and watched the sister-in-law's children as well as her own. Mother's sole source of income was \$800 a month in welfare.

Mother didn't consider asking grandmother for help with transportation; she didn't consider sending a note in Roman's backpack asking father for phone numbers and addresses. Mother testified she got rides when she really needed them, including getting a ride to court for the abandonment proceedings.

Father testified he moved to a new address in January 2013. He placed a note in Roman's backpack with the new address and the information on Roman's new school. When Roman returned from visitation, the note was no longer in the backpack.

Mother's last weekend visitation with Roman was in May 2013. At that time, father had placed a note in Roman's backpack with his new phone number; the note remained there for two weeks, and then father took it out. Father didn't have an address or phone number for mother at this time, but he did have contact information for the maternal grandmother.

Father next had contact with mother on November 8, 2013, in response to mother calling the school; he called mother at the number she left with the school. Father spoke with mother three times that day. Mother gave him her address and admitted she didn't know where Roman would be sleeping if he visited her. Father was concerned about the living arrangements and the long lapse in visits. He invited mother and her children to

join him, Roman, and Erica, for dinner at a pizza parlor and offered to pick up mother and her children and drive them, so the three adults could discuss matters.

Mother never paid support for Roman and father never asked for support from mother. Father didn't have good telephone numbers for mother, but he had addresses where he could locate her.

Father believed it was in Roman's best interests to terminate Roman's contact with some of the maternal family members because of what appeared to be drug and gang involvement by those family members.

Erica kept a record of mother's visitation since February 2011, when Roman had come to live with her and father. Starting in January 2012, mother visited Roman approximately one weekend a month until May 2013. After May 2013, there were no visits.

Erica acknowledged she and mother had argued before. Erica was the one who first called mother back, though, when she contacted the school in November 2013 and wanted to visit Roman.

Maternal grandmother testified she was mother's primary source of transportation, although her husband and her son could also assist with transportation. Mother didn't have a driver's license, but she knew how to drive and grandmother sometimes allowed mother to use her car, but not to pick up Roman because she lacked a license. Grandmother had 13 children and 38 grandchildren.

The school secretary at Roman's school, Kelli Nicks, testified that she had the school log from August 4, 2011, to February 8, 2012, that showed the times Roman had not been picked up by 2:15 and had to come to the office. There was a note on file to contact the office if Roman was not picked up by 15 minutes after school was out. Father had also told the school that mother was to have visitation and pick Roman up every other Wednesday and Friday. Nicks recalled that father or Erica was called to come pick Roman up on most Wednesdays; she didn't recall that being the case for Fridays.

At the conclusion of the evidentiary portion of the trial, the trial court found that mother made only token efforts to locate and visit with Roman between May 2013, when she last saw Roman, and July 3, 2014, when the petition was filed.

The order terminating parental rights was filed September 14, 2015. Mother timely appealed.

DISCUSSION

Mother contends substantial evidence does not support the finding of abandonment. She also contends termination of parental rights was not in Roman's best interests. We disagree.

I. Abandonment

Standard of Review

Under section 7822, subdivision (a)(2), a proceeding to have a child under the age of 18 years old declared free from a parent's custody and control may be brought where "[t]he child has been left by both parents or the sole parent in the care and custody of another person for a period of six months without any provision for the child's support, or without communication from the parent or parents, with the intent on the part of the parent or parents to abandon the child."

A court may terminate parental rights of a natural parent when it finds one parent "has left the child in the care and custody of the other parent for a period of one year without any provision for the child's support, or without communication from the parent, with the intent on the part of the parent to abandon the child." (§ 7822, subd. (a)(3).) The court considers the frequency of the parent-child communications, the genuineness of the effort and the quality of the communications that occurred. (*People v. Ryan* (1999) 76 Cal.App.4th 1304, 1316.)

The court may presume an intent to abandon the child where the evidence shows the absent parent has failed to provide support to the child or failed to communicate with

the child for the one-year period. Token efforts to support or communicate do not suffice. (§ 7822, subd. (b).)

The trial court's finding of abandonment must be supported by clear and convincing evidence. (§ 7821.) On review, we determine whether substantial evidence exists to support the court's findings. (*In re B. J. B.* (1986) 185 Cal.App.3d 1201, 1211.) We must consider the entire record in the light most favorable to the judgment and determine whether it contains substantial evidence, i.e., evidence that is reasonable, credible, and of solid value to support the court's finding. (*People v. Ryan, supra*, 76 Cal.App.4th at p. 1313.) We must disregard every fact contrary to the judgment and presume the truth of every fact supporting the judgment that can be reasonably deduced from the evidence. (*Id.* at pp. 1313, 1316.)

Substantial Evidence of Abandonment

The party seeking a declaration of abandonment must prove the offending parent intended to abandon the child for the statutory period. (See *In re Daniel M.* (1993) 16 Cal.App.4th 878, 886; see also *In re Marriage of Dunmore* (2000) 83 Cal.App.4th 1, 5; *People v. Ryan, supra*, 76 Cal.App.4th at p. 1316.)

Intent to abandon is a question of fact. (*In re B. J. B., supra*, 185 Cal.App.3d at p. 1212.) “““Intent to abandon, as in other areas, may be found on the basis of an objective measurement of conduct, as opposed to stated desire.” [Citation.]” (*People v. Ryan, supra*, 76 Cal.App.4th at p. 1316.) The “failure to provide ... support, or failure to communicate is presumptive evidence of the intent to abandon. If the parent or parents have made only token efforts to support ... the child, the court may declare the child abandoned by the parent or parents.” (§ 7822, subd. (b).) To overcome the statutory presumption, the parent must make more than token efforts to support or communicate with the child. (*In re B. J. B., supra*, at p. 1212; § 7822, subd. (b).) The court may take into consideration “not only the number and frequency of his or her efforts to communicate with the child, but the genuineness of the effort under all the circumstances

[citation], as well as the quality of the communication that occurs [citation].” (*In re B. J. B.*, *supra*, at p. 1212.)

Analysis

The substantial evidence standard of review on appeal places a heavy burden on mother. We need not accept her testimony at face value. Instead, we resolve all evidentiary conflicts in favor of the trial court’s conclusions regarding abandonment and intent. We will not disturb a decree adjudging that a minor is an abandoned child if the evidence is legally sufficient to support the findings of fact. We do not decide questions of witness credibility, nor do we resolve evidentiary conflicts. (*Adoption of Allison C.* (2008) 164 Cal.App.4th 1004, 10101011, 1015 & fn. 9; see *In re Noreen G.* (2010) 181 Cal.App.4th 1359, 1382.)

Section 7822, subdivision (a)(3), provides that a petition to terminate parental rights may be brought when a parent has left the child in the custody of the other parent, “without any provision for the child’s support, or without communication from the parent, with the intent on the part of the parent to abandon the child.” Here, the uncontested evidence is that mother did not contribute to Roman’s support for a period of one year. Evidence of failure to provide support, even when there has been no demand, coupled with a failure to communicate with the child, may be used as evidence of intent to abandon. (*In re Randi D.* (1989) 209 Cal.App.3d 624, 630.)

The evidence also is uncontested that mother did not visit with or see Roman for a period of over one year, from May 2013 to the filing of the petition in July 2014. In determining whether there has been communication between a parent and child, the court considers the frequency of the parent-child communications, the genuineness of the effort and the quality of the communications that occurred. (*People v. Ryan*, *supra*, 76 Cal.App.4th at p. 1316.)

Mother’s efforts to communicate with Roman from May 2013 to July 2014 were at best token. Mother had the opportunity to see Roman in November 2013, but refused

to do so because she does not like Roman's stepmother. Mother knows how to drive, but took no steps to obtain a valid driver's license, even though she apparently would have been able to borrow the maternal grandmother's car to visit with Roman had she obtained a valid license. Mother never asked father to assist or provide transportation for Roman's visitation. Mother could have availed herself of public transportation, either a bus or taxi, in order to facilitate visitation with Roman, but never attempted to do so. Mother never called father at work, to seek a home phone number to contact Roman.

The lack of any contact and the lack of any support for a period of one year constitute objective evidence of an intent to abandon. (*People v. Ryan, supra*, 76 Cal.App.4th at p. 1316.) The "failure to provide ... support, or failure to communicate is presumptive evidence of the intent to abandon. If the parent or parents have made only token efforts to support ... the child, the court may declare the child abandoned by the parent or parents." (§ 7822, subd. (b).) To overcome the statutory presumption, the parent must make more than token efforts to support or communicate with the child. (*In re B. J. B., supra*, 185 Cal.App.3d at p. 1212; § 7822, subd. (b).) Mother made, at best, token efforts to communicate with or see Roman, which are insufficient to overcome the presumption.

Substantial evidence supports the trial court's finding of abandonment. (*In re B. J. B., supra*, 185 Cal.App.3d at p. 1211.)

II. Best Interests of Child

In a section 7822 proceeding, if the trial court finds abandonment, as it did here, then the court must consider the child's best interests before deciding whether to terminate parental rights. (*Neumann v. Melgar* (2004) 121 Cal.App.4th 152, 162.) In determining the best interests, the trial court may consider the wishes of the child and must construe section 7822 to serve and protect the child. (§§ 7800, 7801.)

Here, Roman told the Family Court investigator he had gotten used to not seeing his mother; when he did see her "they" were mean to him; and he loved Erica and wanted

to be adopted by Erica. Mother had failed to communicate with Roman for over a year and Roman was adjusted to the lack of communication. Mother's home life lacked stability and permanency; father and Erica provided consistency and stability for Roman.

The trial court reasonably could have concluded that granting the section 7822 petition was in the best interests of Roman. (*Lester v. Lennane* (2000) 84 Cal.App.4th 536, 595.)

DISPOSITION

The September 14, 2015, order terminating parental rights of the biological mother is affirmed.